

IN THE JOHNSON COUNTY DISTRICT COURT  
CRIMINAL DIVISION

State of Kansas  
Plaintiff

Case no 24-DV00172


vs.

Matthew Escalante  
Defendant

MOTION TO CORRECT ILLEGAL SENTENCE

The Defendant submits this Motion to Correct Illegal Sentence pursuant to KSA 60-1507 and given on good faiths upon the Grounds of the Court's visible lack of Personal and Subject Matter Jurisdiction over the Defendant on these matters of alleged restraining order violation. The following facts are present surrounding case 24-DV00172 and the parties civil court orders alleged to purportedly violated by Defendant:

1. Exhibit A is the current Civil Court order that has jurisdiction over parties Matthew Escalante and divorced exwife Janelle Escalante and their 2 minor daughters. Ex. A is titled Doc 307 Journal Entry and Final Judgement from 18CV03813 and it clearly states the civil order is pursuant KSA 23-3219 and KSA 60-245 and only a purported violation of it under KSA Chapter 23 statutes is possible with parties.
2. The criminal complaint lists 4 possible statutes as being what the Purported Civil Order alleged violated here is pursuant to KSA 38-2242, 2244, 2245 and KSA 60 1607. The first three listed cannot apply to Matthew Escalante and facts present The other KSA 60-1607 is an old statute has been moved into new family law codes, and revisor of statutes lists it as Newly KSA 23-3707 Under Revisor's Note:  
" Section transferred to 23-2707."
3. *The KSA 23-2707 state statute is listed as such: 23-2707. Interlocutory orders; permissible orders; ex parte orders; support orders; service of process. (a) Permissible orders. After the filing of a petition for divorce, annulment or separate maintenance, and during the pendency of the action until the entry of final judgment the judge assigned to hear the action may, without requiring bond, make, modify, vacate and enforce by attachment, orders*  
*CaseAnnotations 14. Statute applies only to temporary orders entered "during the pendency of the [divorce] action prior to final judgment," but does not apply to orders made after final judgment. State vs Hendricks, 52 Kan. App. 2d 737, 738, 372 P.3d 437 (2016)*
4. Parties Mr Escalante and purported 'victim' mother Janelle Escalante of this purported 'Crime' are currently in their 5th year of divorce after Final Judgement of 18CV03813.
5. The statute in which the Assistant District Attorney Andrew J. Jennings is attempting to wrongfully prosecute and interfere into Defendants companionships with his daughters cannot even apply to the Defendant because this civil Order alleged to be violated does not and can not apply to a party in their 5th year after Final Judgement in a KS divorce under KSA 60-1607. Because the Order over Matthew Escalante is pursuant 23-3219. Family Law Codes
6. Judge Burmaster used the wrong statutes if Assistant District Attorney Jennings believes he can criminally charge Mr Escalante, under a non applicable statute to parties. Mr. Escalante can't be charged for anything under 23-3207(KSA 60-1607 or the other statutes listed in Complaint in 24-DV00172, that would create a Manifest Injustice subject to KSA 60-1507, Motion Correcting an Illegal Sentence

7. Defendant provides this Motion to Correct the Illegal Sentence that is Occurring in 24-DV00172, as there lack of Personal and Subject Matter jurisdiction as the District Attorney's office is not following Kansas Law in how it is prejudicing against the Father, who is defendant in this case.
8. The Kansas Courts have previously held the similar situation of State Vs Hendricks, The Court found that the reversal of a sentence was owed and then granted to Defendant Daniel Hendricks.
9. A fair and just Johnson County Courts would also stop this proceeding from continuing entirely to avoid a future 'State Vs Escalante' reversal. Defendant requests the Court issue disciplinary measures onto Plaintiff undersigned on the Complaint, Andrew J Jennings, and Also severe disciplinary measures for Janelle Leigh Escalante's Material Misrepresentation in this proceeding to GPD of court orders.
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Matthew Escalante  
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913-286-2250  
no fax  
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### CERTIFICATE OF SERVICE

I hereby certify that Motion to Correct Illegal Sentence of 24-DV00172 was sent to parties in the proceeding on Feb 16, 2024 via electronic mail service

Assistant District Attorney  
150 W SantaFe St 3rdFloor  
Olathe KS 66061

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS  
CIVIL COURT DEPARTMENT

In the Matter of:	)	
	)	
JANELLE ESCALANTE,	)	
Petitioner,	)	
and	)	Case No. 18CV3813
	)	Division No. 14
MATTHEW ESCALANTE,	)	
Respondent.	)	

**JOURNAL ENTRY OF JUDGMENT AND FINAL ORDER**

NOW ON THIS 18<sup>th</sup> day of October, 2023, this matter comes on for hearing. Petitioner appears not but by counsel, Christopher Wilson. Respondent appears with appointed counsel, Edward Bigus. The Court considers the record and the arguments of Respondent Father, his counsel, and Petitioner's counsel. Whereupon the Court finds and orders as follows:

1. Over a year ago, on June 30, 2022, Father was ordered by this Court to exercise a handful of supervised parenting sessions at The Layne Project due to disturbing messages he had sent to the children.
2. Father made clear to the Court that he would "take a knee" and not see his children until after the first of the year.
3. The Court implored Mr. Escalante to reconsider, to visit his children, to work with the Guardian Ad Litem, and to re-establish a normal parenting routine with his children.
4. **Since that time, Father has steadfastly refused to see his children.**
5. The Court has done all it can to encourage Father to see his children. The Court has asked Father, the Court has explained that seeing the children would be in their best interest, the Court has threatened Father with contempt, and the Court has even sentenced Father to 30 days in jail --- all to no avail. Even at no cost to him, Father has refused to visit his

*Clerk of the District Court, Johnson County Kansas*  
10/18/23 11:43am JLD

children.<sup>1</sup>

6. **Father has steadfastly refused to see his children and refused to provide all but the tiniest of financial support.**
7. Instead of seeing or supporting his children, Father has focused on harassing Mother, her counsel, the Court, and others with frivolous lawsuits and absolutely false allegations on the internet.
8. The Court has been as patient as it can be with Father but sees no just reason for further delay.
9. The parties have been divorced for several years and the Court has made plain that only two issues remain in this case: parenting time and child support.
10. The Court will leave the issue of child support to the Hearing Officer.
11. Regarding parenting time, the Court finds pursuant to K.S.A. 23-3203 that it is in the best interests of the minor children that Mother have sole decision-making custody of the children as Father has refused to see his children. Further, as Father has actively estranged himself from the children, Father will exercise no time with the children or contact the children by any means until he contacts Livingston Counseling, begins reintegrative therapy with the children at his expense, and produces a report from the therapist recommending expanded time with the children. He is directed to contact Livingston Counseling without delay. The Court will consider no motions *of any kind* by Father until he complies with the Court's order.

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<sup>1</sup> Today, Father provided a wholly non-credible excuse for not visiting his children as ordered. His attempt to blame The Layne Project was simply nonsensical. However, the Court declined to send Father to jail because the point of the 30-day sentence was not to incarcerate Father but instead to persuade him to visit his children. It is clear now he refuses to see his children and will go to lengths to ensure that he doesn't.

12. This final order and judgment is issued in accordance with K.S.A. 60-254. Parties are advised they may appeal this decision.

**IT IS SO ORDERED.**

/s/ Paul W. Burmaster  
DISTRICT COURT JUDGE

No. 113,597  
Court of Appeals of Kansas.

## State v. Hendricks

52 Kan. App. 2d 737 (Kan. Ct. App. 2016) · 372 P.3d 437  
Decided May 6, 2016

No. 113,597.

05-06-2016

STATE of Kansas, Appellee, v. Daniel HENDRICKS, Appellant.

Jean Ann Uvodich, of Olathe, for appellant.  
Shawn E. Minihan, assistant district attorney,  
Stephen M. Howe, district attorney, and Derek Schmidt, attorney general, for appellee.

LEBEN, J.

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Jean Ann Uvodich, of Olathe, for appellant.

Shawn E. Minihan, assistant district attorney,  
Stephen M. Howe, district attorney, and Derek Schmidt, attorney general, for appellee.

Before ARNOLD-BURGER, P.J., GREEN and LEBEN, JJ.

LEBEN, J.

Daniel Hendricks appeals his criminal conviction for violating a no-contact order entered in his divorce case. Hendricks argues that the statute making it a crime to violate a protection order doesn't apply to orders entered in a divorce case *after* the divorce decree has been entered. The order Hendricks violated was entered several years after the decree in his divorce case, during new disputes with his ex-wife about child-custody and visitation matters.

Hendricks argues on appeal that K.S.A. 2013 Supp. 21–5924, the statute that makes it a crime to violate certain protection orders, did not apply to the protection order he violated. The statute makes it a crime to violate protection orders entered under several specifically listed statutes, including 738 protection-from-abuse orders \*738 entered under [K.S.A. 60–3105](#), 60–3106, or 60–3107 ; protection-from-stalking orders entered under [K.S.A. 60–31a05](#) or 60–31a06 ; and temporary orders issued in divorce cases under K.S.A. 2013 Supp. 23–2707. The State cites K.S.A. 2013 Supp. 23–2707 as the authority for the no-contact order entered against Hendricks.

But that provision, K.S.A. 2013 Supp. 23–2707, applies only to temporary orders entered “during the pendency of the [divorce] action prior to final judgment,” while three *other* statutes provide for the modification of child-custody or parenting-time orders *after* final judgment: K.S.A. 2013 Supp. 23–3218, 23–3219, and 23–3221. Accordingly, Hendricks was right that the criminal statute under which he was charged did not apply, and we must set aside his conviction.

### Analysis

We have only limited information about the underlying disputes between Hendricks and his ex-wife, as only three documents from the divorce file are in our record: (1) an amended divorce petition filed in 2006; (2) the decree of divorce filed in 2006 (though without the parties' separation agreement, which the decree says was attached to it); and (3) the no-contact order filed in